



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNDCT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on April 17, 2019 (the “Application”). The Tenant applied for compensation for monetary loss or other money owed and reimbursement for the filing fee.

The Tenant appeared at the hearing with the Law Student and Supervising Lawyer. The Landlord appeared at the hearing with her husband.

The parties confirmed the correct spelling of the rental unit address which is reflected on the front page of this decision. The second tenant named on the Application was removed at the request of the parties.

I explained the hearing process to the parties who did not have questions when asked. The Tenant, Landlord and B.G. provided affirmed testimony.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered the documentary evidence submitted and the oral testimony of the parties. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Tenant entitled to compensation for monetary loss or other money owed?
2. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

The Tenant sought \$949.63 as compensation for loss of quiet work and living space as well as loss of wages due to renovations occurring in the residence above him from October 19, 2018 to November 27, 2018.

The parties agreed this tenancy started December 01, 2015. The parties agreed rent at the end of the tenancy was \$1,600.00 due on the first day of each month.

The Law Student made the following submissions.

The rental unit is in the basement of a house. The Landlord lived in the upper part of the house. The Landlord had renovations done. This is the construction the Tenant is taking issue with.

The Tenant did not receive notice from the Landlord before the construction started. On October 19, 2018, the Landlord met with the Tenant and told him construction would start in three days; however, construction started the same day. The Tenant did not have time to prepare for the construction. The Tenant was told the construction would last two weeks; however, it lasted six weeks.

The Tenant was not able to use his home office during the construction. The Tenant primarily works from his home office because he is a PhD student. The Tenant needs quiet to concentrate. The Tenant had to relocate to the University and find other space to work without any notice. This required one and a half hours of commuting. This was time lost that could have been spent working. The Tenant's work was affected by noise for 16.5 hours. For eight days of the construction, the Tenant could not use the rental unit to work or rest and had to go elsewhere. The Tenant moved out of the rental unit December 15, 2018.

The construction was unreasonable because it lasted four weeks longer than it should have. The disturbance to the Tenant was significant because he could not work from his home office. The Tenant was affected by the noise. He used headphones for him and his dog; however, this did not make a difference. The Tenant could not use his

office at the University because it was not available for his personal use. The Tenant's supervisor offered her office for the Tenant to use because of his lack of work space.

The Law Student relied on section 28 of the *Residential Tenancy Act* (the "Act") and Policy Guideline 6 in relation to the Tenant's right to quiet enjoyment. The Law Student relied on section 67 of the *Act* as the basis for compensation.

The Law Student relied on prior RTB decisions. The Tenant had not submitted these or provided them to the Landlord.

The Landlord testified as follows.

She disagrees with the statements made. She provided the Tenant and second tenant (the "Tenants") with notice of the renovations prior to starting them. She told the Tenants at the end of July or beginning of August that they were going to do the final phase of the renovations. When the Tenants moved in, the Landlord had a conversation with the second tenant about the Tenants needing to be okay with renovations. A couple days after September 27, 2018, she told the Tenants renovations were being set up with the contractor, but the start date was up in the air. The second tenant said this was fine as she worked from 9:00 to 5:00. The Tenant said he had space to go to at the University. She did not tell the Tenants the renovations would only take two weeks. She told the Tenants they would try to get the renovations done within a month.

The Tenant has not provided an unbiased estimate of the loss claimed. The Tenant has not provided proof of loss. The renovations caused only temporary discomfort or inconvenience and nothing more. The Tenants were possibly inconvenienced for a few hours before they went to work. Other than one or two Saturdays, the contractor was at the house from 9:00 to 4:00 during the week. She spoke to the next-door neighbour who said they did not find the renovations noisy. This neighbour tries to sleep during the day. She never received any concerns or complaints about noise. One Saturday, the Tenants called about the renovations and she asked the contractor to stop.

In reply, the Law Student asked the Landlord why she did not offer a rent reduction because the renovations extended for a long period of time. The Landlord said she did not feel it was necessary because she gave the Tenants a lot of warning about the renovations and the noise was in accord with bylaws.

It was not until this point that the Tenant provided testimony on this hearing. He testified as follows. He has no recollection of thanking the contractor for being

organized as stated in the contractor's letter. He disagrees with the contractor's statement that he was not present in the rental unit during the renovations. He was present. He could hear the noise coming through the ceiling. The sound barrier, being the floors, had been removed. His work routine was thrown off kilter. He was completely inconvenienced. He needs quiet to focus. It was impossible for him to find an equivalent space at the University to work. His office at the University cannot be used for personal work. There was no other space he could work in complete silence. His home office is his primary work space where he reads, writes and prepares for teaching.

I asked the Tenant if he ever complained to the Landlord about the noise, other than the one text message in evidence. The Tenant said he did not.

I allowed the Landlord to reply given the Tenant provided testimony for the first time during the hearing in his reply to the Landlord's submissions. The Landlord asked why she heard about this issue for the first time in April. She said she might have been able to do something to help if the Tenant had brought this to her attention earlier.

In the written materials, the Tenant has outlined the dates he was affected by the noise. Two of these days were on weekends. I understand from the testimony of the parties and Tenant's written materials that the Landlord did not live in the upper part of the house while it was being renovated. The Tenant's evidence shows that the Tenant sent the Landlord an email October 25, 2018 about a hole appearing in the ceiling. The email says nothing about noise. The materials show the Tenant spoke to the Landlord about noise on the weekend via phone and text on November 03, 2018.

I have reviewed the remaining materials which I will not refer to here given my decision on this issue.

Analysis

I have not relied on the prior RTB decisions referred to by the Law Student. The Tenant did not provide these with the evidence. The Law Student provided me with decision numbers; however, I am not able to determine which specific decision the Law Student is relying on based on the numbers provided. Further, the Landlord did not receive these decisions and could not comment on them. If the Tenant had wanted to rely on prior RTB decisions, these should have been submitted and provided to the Landlord so all parties knew what was being relied on and the Landlord could make submissions about them.

Section 7 of the *Act* states:

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

[emphasis added]

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

[emphasis added]

The Tenant had a right to quiet enjoyment pursuant to section 28 of the *Act*.

Policy Guideline 6 deals with the right to quiet enjoyment and states in part at page one:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance,

but failed to take reasonable steps to correct these.

[emphasis added]

Pursuant to rule 6.6 of the Rules of Procedure, it is the Tenant who has the onus to prove the claim.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

The Tenant took the position that he was not given prior notice of the renovations and was told they would only last two weeks. The Landlord denied this and took the position that the Tenant was aware of the renovations and was told they would try to get them done within a month. Neither party submitted compelling evidence to support their position on these issues. However, this is the Tenant's claim and therefore the Tenant has the burden to prove it is more likely than not that the facts occurred as claimed. The Tenant has not proven that the renovations were done without notice to the Tenants or that the Landlord said they would only take two weeks. I find this relevant to the lack of mitigation that occurred here.

The Tenant acknowledged that the Tenants did not tell the Landlord there was an issue with the noise from the renovations, other than on November 03, 2018. I have reviewed the November 03, 2018 texts and find that the issue raised was about work being done on the weekend outside of the times permitted by the applicable by-law. I do not find the texts to be sufficient notification to the Landlord about an overall issue with the noise.

Given the position of the Landlord that she told the Tenants about the renovations and that they were fine with them, and given the Landlord was not living in the upper part of the house at the time, I am not satisfied the Landlord should have known that the renovations were causing a substantial interference with the Tenants' ordinary and lawful enjoyment of the premises.

If the renovations were in fact causing a substantial interference with the Tenants' ordinary and lawful enjoyment of the premises, the Tenants should have let the Landlord know this so that the Landlord could attempt to address the situation while it was occurring. This is the minimum I would expect the Tenants to do to mitigate their loss. It is reasonable to expect that the Tenants would have let the Landlord know

about the noise issue if it was causing an unreasonable disturbance. Based on the evidence, I do not find this to be a situation where the Landlord could not have done anything to address the situation.

Based on the evidence, I do not accept that the Tenants took reasonable steps to mitigate any loss. Given this, I am not satisfied the Tenants are now entitled to monetary compensation based on the noise and a loss of quiet enjoyment. The Application is dismissed without leave to re-apply.

Given the Tenant was not successful, I decline to award him reimbursement for the filing fee.

Conclusion

The Application is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: August 14, 2019

Residential Tenancy Branch